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9 UNITED STATES DISTRICT COURT
10 FOR THE WESTERN DISTRICT OF WASHINGTON
11 AT SEATTLE

12 IN RE: AMAZON SERVICE FEE
13 LITIGATION

Case No: 2:22-cv-00743-TL

(CONSOLIDATED CASE)

14 CONSOLIDATED CLASS ACTION
15 COMPLAINT- DEMAND FOR JURY TRIAL
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CONSOLIDATED COMPLAINT- CLASS ACTION
DEMAND FOR JURY TRIAL

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Seattle, Washington 98101
(206) 531-2722

1 Plaintiff Dena Griffith (“Plaintiff”), hereby brings this Action against Defendant Amazon.com,
2 Inc. (“Defendant” or “Amazon”) for misleading consumers concerning the amounts they must pay for
3 grocery deliveries from Whole Foods Market and for breaching its contracts with its Amazon Prime
4 members, and upon information and belief and investigation of counsel alleges as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has original jurisdiction over this action under the Class Action Fairness Act
7 of 2005 (“CAFA”), 28 U.S.C. § 1332(d). Defendant is a citizen of a state different from that of the
8 Plaintiff, the putative class size is greater than 100 persons, and the amount in controversy in the
9 aggregate for the putative Class exceeds the sum or value of \$5 million exclusive of interest and costs.

10 2. This Court has both general and specific personal jurisdiction over the Defendant
11 because Defendant has conducted and continues to conduct substantial business in the State of
12 Washington and in King County, Washington.

13 3. This Court has specific personal jurisdiction arising from Defendant’s decision to
14 conduct business in Washington. Defendant has sufficient minimum contacts with this State and
15 sufficiently avails itself to the markets of this State to render the exercise of jurisdiction by this Court
16 reasonable. Defendant maintains its corporate headquarters in the state of Washington.

17 4. Venue is proper in the United States District Court for the Western District of
18 Washington pursuant to 28 U.S.C. § 1391(b) because Defendant resides in this District.

19 **II. PARTIES**

20 5. Defendant Amazon is the world’s largest online marketplace. It is a Delaware
21 corporation that is headquartered at 410 Terry Avenue North, Seattle, Washington 98109-5210.

22 6. Plaintiff Dena Griffith is a citizen of the State of California who resides in Riverside
23 County, California.

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III. FACTUAL ALLEGATIONS

A. Amazon Advertises that Its Prime Members Will Receive “Free Delivery” and “Free 2-Hour Grocery Delivery”

7. Amazon offers a service called Amazon Prime, which is a paid subscription service that gives users access to additional services otherwise unavailable or available at a premium to other Amazon customers. Amazon Prime services include same, one or two-day delivery of goods and streaming music, video, e-books, gaming and grocery shopping services. In April 2021, Amazon reported that Prime had more than 200 million subscribers worldwide.¹

8. Amazon charges its customers approximately \$14.99 per month or \$139 per year for an Amazon Prime membership. Attached hereto as Exhibit 1 is a true and correct copy of Amazon’s current Prime Membership Agreement as of October 21, 2022.²

9. One of the advertised benefits of Amazon Prime is that members will receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery,” including grocery deliveries from Whole Foods Market. Amazon makes these representations on the Amazon website and in television and print advertisements. Below are representative examples of advertisements from Amazon’s website:

¹ See *Amazon Prime Tops 200 Million Members, Jeff Bezos Says*, VARIETY, available at <https://variety.com/2021/digital/news/amazon-prime-200-million-jeff-bezos-1234952188/> (last visited June 6, 2022).

² The Prime Membership Agreement is available at <https://www.amazon.com/gp/help/customer/display.html?nodeId=G2B9L3YR7LR8J4XP> (last visited October 21, 2022).

FREE 2-Hour Grocery Delivery

Free ultrafast delivery on groceries and household essentials



Shop a wide selection of groceries including fresh foods and produce with free two-hour delivery from Fresh and your local Whole Foods Market. Available in select US cities

- Go to amazon.com/grocery to learn more
- Meet minimum order amount*
- Checkout using your existing Amazon account

* Threshold amount may vary

Check out what's included:



Fast, free delivery

Enjoy fast, free delivery, just for being a Prime member - including 2-hour delivery on thousands of items!



Popular movies and shows

New releases. Award-winning Amazon Originals. Watch what you love on your favorite devices.



Join Prime

FREE One-Day Delivery

Get items the next day



Available on more than ten million products, with no minimum purchase. Receive orders by 9 p.m the next day. Filter by "Get it tomorrow" when shopping. Selection and order cutoff varies by area.

- Look for the One-Day logo
- Add eligible items to your cart.
- Select delivery option at checkout.

LEARN MORE

B. Amazon’s “Free Delivery” Advertisements Are False and Misleading Because Amazon Charges a \$9.95 Service Fee for Grocery Deliveries from Whole Foods Market

10. Whole Foods Market is a supermarket chain that is popularly known for its selections of organic foods. Whole Foods has approximately 500 stores in North America. In August of 2017, Amazon acquired Whole Foods Market and continues to own Whole Foods Market.

11. Amazon offers its prime members 2-hour grocery delivery from Whole Foods Market.



Pickup and delivery

Prime members get convenient 2-hour grocery delivery and 1-hour pickup from their local store (available in select cities). Learn more and find frequently asked questions [here](#).

Start a delivery or pickup order

12. Amazon advertises that its Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery,” including for grocery deliveries from Whole Foods Market. This is false.

13. In approximately October of 2021, Amazon began charging its customers—including its Prime member customers—a \$9.95 “service fee” for all grocery deliveries from Whole Foods Market.³ Accordingly, Amazon’s representations that Prime members will receive “FREE Delivery”

³ See *Amazon slaps a \$9.95 fee on Whole Foods deliveries. And Walmart pounces*, CNN, available at <https://www.cnn.com/2021/10/28/business/walmart-amazon-prime-fee/index.html> (last visited June 6, 2022).

1 and “FREE 2-Hour Grocery Delivery” are false, misleading, and likely to deceive a reasonable
2 consumer, and Amazon’s advertising and marketing omit information that would be important or
3 material to a reasonable consumer. Moreover, many Amazon Prime Members report not receiving their
4 deliveries during the promised delivery period.⁴ Accordingly, Amazon’s promise of “FREE 2-hour
5 grocery delivery is false and misleading.

6 14. Amazon’s \$9.95 “service fee” is in essence a hidden or mislabeled delivery fee. As
7 admitted by Amazon, the service fee was “put in place to help cover delivery operating costs like
8 equipment and technology without raising product prices.”⁵ Amazon customers are only charged the
9 \$9.95 “service fee” for Whole Foods grocery deliveries. If a customer instead choses to pick up the
10 items in-store, then that customer will not be charged the service fee.

11 **C. Amazon Engages in Bait-and-Switch Advertising by Not Disclosing the \$9.95**
12 **Service Fee with the Advertised Price of the Whole Foods Grocery Items**

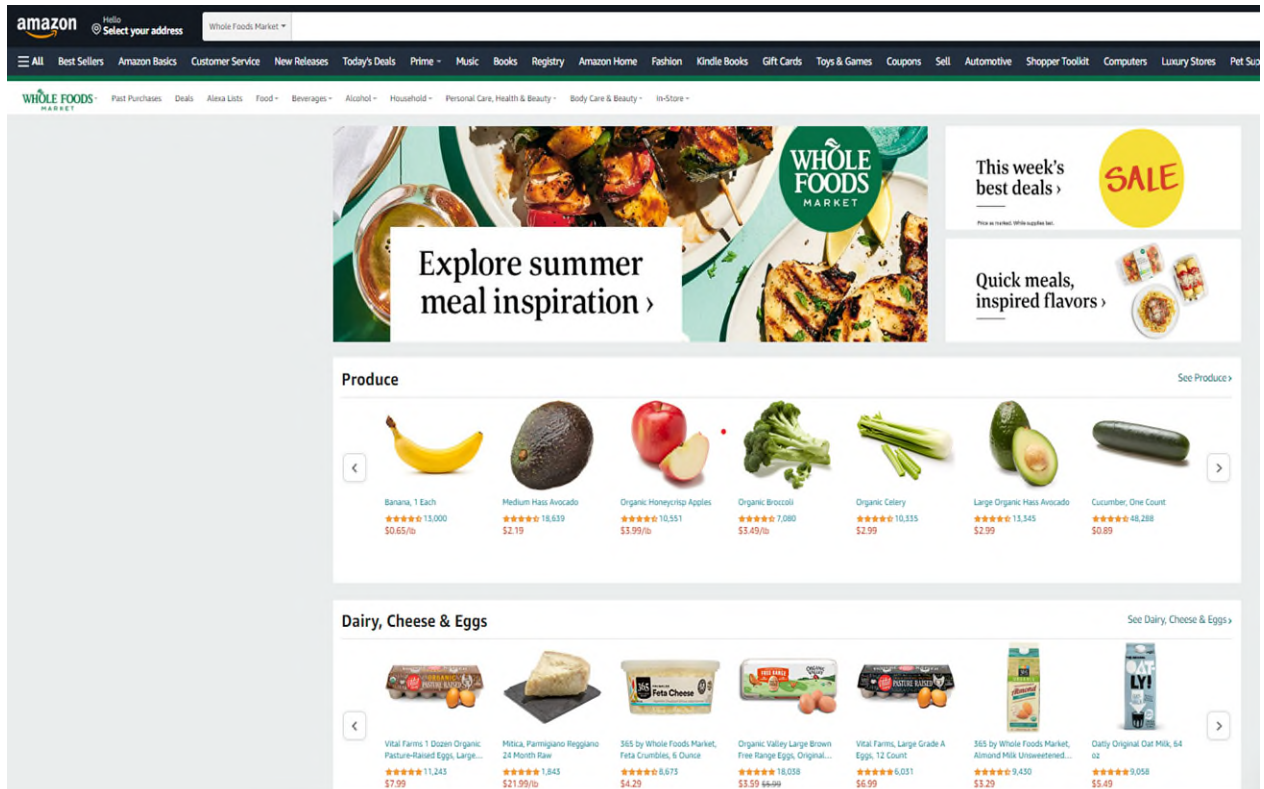
13 15. In addition to Amazon’s false representations that Prime members will receive “FREE
14 Delivery” and “FREE 2-Hour Grocery Delivery,” Amazon engages in a bait-and-switch advertising
15 scheme by not disclosing the \$9.95 service fee along with the advertised price of the Whole Foods
16 grocery items.

17 16. The first page of the Whole Foods delivery section on Amazon’s website displays various
18 grocery items alongside the advertised price of the items. For example, the advertised price of Whole
19

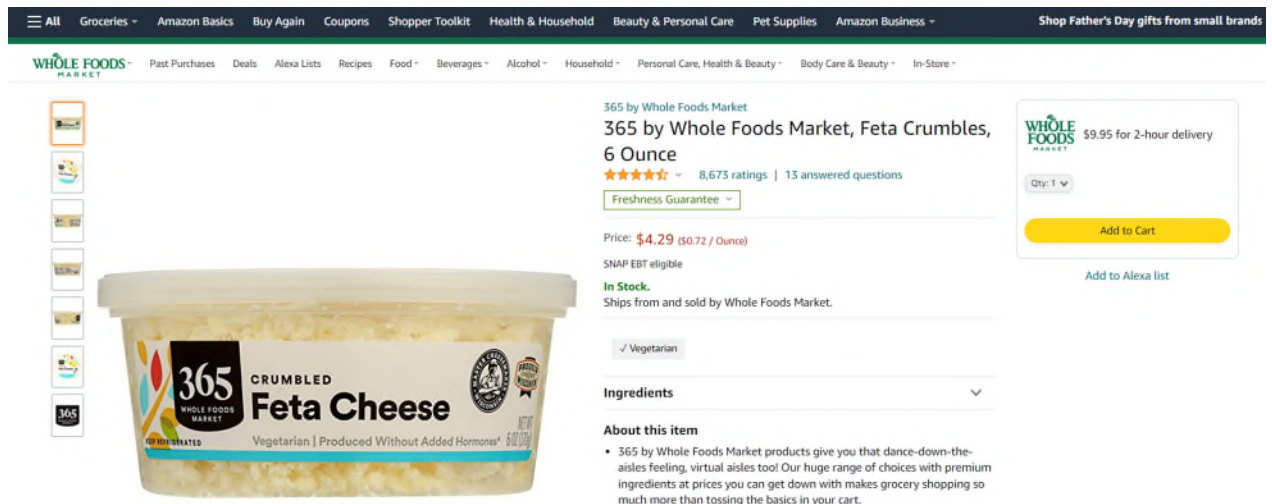
20 ⁴ Hank Winchester, *Amazon Prime Customers experiencing delays in free 2-day shipping in U.S.,*
21 *available at* [https://www.clickondetroit.com/consumer/help-me-hank/2022/09/09/help-me-hank-](https://www.clickondetroit.com/consumer/help-me-hank/2022/09/09/help-me-hank-amazon-prime-customers-experiencing-delays-in-free-2-day-shipping-in-us/)
22 [amazon-prime-customers-experiencing-delays-in-free-2-day-shipping-in-us/](https://www.clickondetroit.com/consumer/help-me-hank/2022/09/09/help-me-hank-amazon-prime-customers-experiencing-delays-in-free-2-day-shipping-in-us/) (last visited October 21,
2022).

23 ⁵ *See Amazon slaps a \$9.95 fee on Whole Foods deliveries. And Walmart pounces*, CNN, *available at*
24 <https://www.cnn.com/2021/10/28/business/walmart-amazon-prime-fee/index.html> (last visited June 6,
2022).

Foods Feta Cheese is \$4.29. Nowhere on this initial webpage is the \$9.95 service fee disclosed as shown below:



17. If a consumer then clicks on the desired grocery item, the next webpage states in opaque text “\$9.95 for 2-hour delivery.” This text is in small font and is unlikely to be noticed by a reasonable consumer. Moreover, the text is in smaller font and in a different color than the advertised price of the grocery item as shown below:



18. Once the consumer clicks on the “add to cart” icon, there is a series of webpages asking for payment and delivery information before the consumer arrives at the final “place your order” page. On the “place your order” page, the service fee is shown in small text above the total price of the delivery that is unlikely to be noticed by a reasonable consumer. Moreover, Amazon also includes a \$5 tip that is shown in small text above the total price of the delivery that is unlikely to be noticed by a reasonable consumer. Although the tip is “optional,” reasonable consumers would not notice that the \$5 tip has been added by default. Amazon’s “place order” page is shown below:

amazon.com [SIGN IN](#) [SHIPPING & PAYMENT](#) [GIFT OPTIONS](#) [PLACE ORDER](#)

Review your Whole Foods Market order

Delivery address [Change](#)
[REDACTED]
SAN DIEGO, CA 92110-3107
United States
Phone: [REDACTED]

Payment method [Change](#)
Debit ending in [REDACTED]

Billing address [Change](#)
[REDACTED]
SAN DIEGO, CA 92114-1731
United States

Add a gift card, promotion code, or voucher

Items delivered by Whole Foods Market
Delivery: Today, June 6, 4pm-6pm

Substitution instructions
If an item is unavailable, your shopper will find a substitution and let you know. [Learn More](#)

365 by Whole Foods Market, Feta Crumbles,
6 Ounce
\$4.29
Quantity: 1 [Change](#)
Sold by: Whole Foods Market

Doorstep Delivery:
Today, June 6, 4pm-6pm [Change](#)

Delivery instructions (include access code if applicable):
None provided [Edit](#)

Place your order

By placing your order, you agree to Amazon's [privacy notice and conditions of use](#).

You consent to receive automated text messages from Amazon about your order.

Order Summary

Est. item subtotal:	\$4.29
Service Fee:	\$9.95
Est. total before tax:	\$14.24
Est. tax to be collected:	\$0.00
Tip (optional): Edit	\$5.00

Est. order total: \$19.24

Your card will be authorized \$21.38 to account for potential changes to your order. [Learn more.](#)

1 19. Amazon’s practice of initially advertising only part of a price and then later revealing the
2 service fee as the consumer completes the buying process has been labeled “drip pricing” by the Federal
3 Trade Commission (“FTC”).⁶ Amazon uses drip pricing to bamboozle consumers using the tried and
4 true classic, and unlawful, bait advertising scheme.⁷ Again, Amazon advertises groceries from Whole
5 Foods at a certain price and then tacks on a mandatory “service fee” later in the ordering process after
6 the consumer is already invested in the ordering process.

7 **D. Amazon Raises its Membership Prices**

8 20. Amid instituting free Whole Foods delivery services for Amazon Prime members,
9 Amazon announced that, beginning on May 11, 2018, the cost of an Amazon Prime membership would
10 increase from \$99 to \$119. While this increased cost immediately applied to new members who joined
11 on or after May 11, 2018, preexisting Amazon Prime members’ fees would increase upon renewal on
12 or after June 16, 2018. Around the time of this announcement, Amazon had approximately 100 million
13 Prime members worldwide.

14 21. Amazon understood that offering free two-hour delivery Whole Foods orders to Prime
15 members increased the monetary value of Prime. At the time, Amazon Chief Financial Officer, Brian
16 Olsavsky, claimed that the price increase was a natural consequence of the growing benefits associated
17 with an Amazon Prime membership, which would include free deliveries from Whole Foods.⁸

18
19 ⁶ See *The Economics of Drip Pricing*, FEDERAL TRADE COMMISSION, available at
<https://www.ftc.gov/news-events/events/2012/05/economics-drip-pricing> (last visited June 6, 2022).

20 ⁷ “Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser in
21 truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised
22 merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous
to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in
buying merchandise of the type so advertised.” 16 CFR § 238.0.

23 ⁸ [https://arstechnica.com/information-technology/2018/04/amazon-to-raise-annual-membership-price-](https://arstechnica.com/information-technology/2018/04/amazon-to-raise-annual-membership-price-of-prime-to-119/)
24 [of-prime-to-119/](https://arstechnica.com/information-technology/2018/04/amazon-to-raise-annual-membership-price-of-prime-to-119/).

1 22. The importance of this benefit became particularly pronounced during the Covid-19
2 pandemic, when deliveries from Whole Foods more than tripled from 2019 to 2020.⁹

3 23. When Amazon eliminated Prime’s free Whole Foods delivery program, however, the
4 cost of a Prime membership was not reduced, nor did it provide any partial refund. Moreover, Amazon
5 Prime members who had used a Prime benefit at any time outside a three-day period at the start of their
6 membership could not cancel their annual membership in response to the unilateral termination of the
7 free delivery program until their next annual renewal date.

8 **E. Plaintiff’s Experience**

9 24. Plaintiff Dena Griffith is an Amazon Prime member who read and relied on Amazon’s
10 online advertisements that Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery
11 Delivery.”

12 25. On January 22, 2022, Plaintiff made an online order for a Whole Foods grocery delivery
13 from the Amazon website and was charged a \$9.95 service fee.

14 26. Plaintiff Griffith was deceived by and relied upon Defendant’s misleading bargain and
15 bait advertising, and specifically the hidden and deceptive nature of the service fee and the fact that
16 Amazon advertises that Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery
17 Delivery.” Plaintiff purchased grocery items from Defendant in reliance on the false and deceptive
18 bargain and bait advertising and without knowledge of the true amount being charged based on
19 Defendant’s deceptive advertising and buried service fee.

20 27. Plaintiff, as a reasonable consumer, is not required to scrutinize advertisements to ferret
21 out misleading facts and omissions, ascertain whether Defendant’s pricing includes or excludes a service
22

23 ⁹ Jay Greene, *Amazon Prime Members Bristle at News of Whole Foods Delivery Charge*, WASH. POST
24 (Sept. 29, 2021).

1 fee. In fact, Plaintiff is lawfully entitled to rely on statements that Defendant deliberately places on its
2 website that Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery.”

3 28. Because Plaintiff reasonably assumed that her grocery delivery order would conform to
4 the advertised price and be free of unlawful or hidden charges, when it was not, she did not receive the
5 benefit of her purchase. Instead of receiving the benefit of a free delivery as advertised, Plaintiff paid a
6 \$9.95 service fee.

7 29. Plaintiff would not have placed her online grocery order and would not have paid as
8 much as she had for the grocery order, in the absence of Defendant’s misrepresentations and omissions.
9 Had Defendant not violated Washington and California law, Plaintiff would not have been injured as
10 she was. Plaintiff was also unable, and will not be able in the future, to effectively compare grocery
11 delivery prices when purchasing from Amazon’s website due to Amazon’s initial deception of
12 advertising grocery prices that are less than what a consumer will ultimately pay. Plaintiff has suffered
13 a concrete, tangible, injury in fact caused by Defendant’s wrongful acts and omissions.

14 30. Plaintiff and the Class have lost money as a result of Defendant’s unlawful behavior.
15 Plaintiff and the Class altered their position to their detriment and suffered loss in an amount equal to
16 the deceptively advertised service fees they paid for Whole Foods grocery deliveries.

17 31. Plaintiff intends to, seeks to, and will purchase Whole Foods grocery deliveries from the
18 Amazon website again when she can do so with the assurance that the advertising of free delivery is
19 lawful.

20 IV. CLASS ACTION ALLEGATIONS

21 32. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant
22 to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).
23
24

1 **33. The Nationwide Classes are defined as follows:**

2 (1) All U.S. citizens who were Amazon Prime members that were charged a service fee in
3 connection with an online delivery from Whole Foods Market from August 1, 2021
4 until the date notice is disseminated to the class, excluding Defendant and Defendant's
5 officers, directors, employees, agents and affiliates, and the Court and its staff.

6 (2) All U.S. Citizens who were Amazon Prime members from June 7, 2018 until the date
7 notice is disseminated to the class, excluding Defendant and Defendant's officers,
8 directors, employees, agents and affiliates, and the Court and its staff.

9 **34. The California Class is defined as follows:**

10 All California residents who were Amazon Prime members that were charged a service fee in
11 connection with an online delivery from Whole Foods Market from August 1, 2021 until the
12 date notice is disseminated to the class, excluding Defendant and Defendant's officers, directors,
13 employees, agents and affiliates, and the Court and its staff.

14 35. The proposed Classes meet all criteria for a class action, including numerosity,
15 commonality, typicality, predominance, superiority, and adequacy of representation.

16 36. This action has been brought and may properly be maintained as a class action against
17 Defendant. While the exact number and identities of other Class Members are unknown to Plaintiff at
18 this time, Plaintiff is informed and believes that there are hundreds of thousands of Members in the
19 Class. The Members of the Class are so numerous that joinder of all Members is impracticable and the
20 disposition of their claims in a class action rather than in individual actions will benefit the parties and
21 the courts.

22 37. The proposed Classes satisfy typicality. Plaintiff's claims are typical of and are not
23 antagonistic to the claims of other Class members. Plaintiff and the Class members all purchased Whole
24

1 Foods grocery deliveries, were deceived by the false and deceptive advertising, and lost money as a
2 result.

3 38. The proposed Classes satisfy superiority. A class action is superior to any other means
4 for adjudication of the Class members' claims because it would be impractical for individual Class
5 members to bring individual lawsuits to vindicate their claims.

6 39. Because Defendant's misrepresentations were uniformly made on Amazon's website, all
7 Class members including Plaintiff were exposed to and continue to be exposed to the omissions and
8 affirmative misrepresentations. If this action is not brought as a class action, Defendant can continue to
9 deceive consumers and violate federal and state law with impunity.

10 40. The proposed Class representative satisfies adequacy of representation. Plaintiff is an
11 adequate representative of the Class as she seeks relief for the Class, her interests do not conflict with
12 the interests of the Class members, and she has no interests antagonistic to those of other Class members.
13 Plaintiff has retained counsel competent in the prosecution of consumer fraud and class action litigation.

14 41. The proposed Classes satisfy commonality and predominance. There is a well-defined
15 community of interest in questions of law and fact common to the Class, and these predominate over
16 any individual questions affecting individual Class members in this action.

17 42. Questions of law and fact common to Plaintiff and the Class include:

18 a. Whether Defendant failed to disclose the presence of a service fee during the online ordering
19 process;

20 b. Whether Defendant's advertising omissions and representations constituted false advertising
21 under Washington and California law;

22 c. Whether Defendant's advertising omissions and representations constituted unfair business
23 practices under the Washington Consumer Protection Act;

1 d. Whether Defendant's conduct constituted a violation of California's Unfair Competition Law;
2 e. Whether Defendant's conduct constituted a violation of California's Consumer Legal
3 Remedies Act;
4 f. Whether the Class is entitled to restitution, rescission, actual damages, punitive damages,
5 attorney fees and costs of suit, and injunctive relief; and
6 g. Whether members of the Class are entitled to any such further relief as the Court deems
7 appropriate.

8 43. Plaintiff will fairly and adequately protect the interests of the Class, has no interests that
9 are incompatible with the interests of the Class, and has retained counsel competent and experienced in
10 class litigation.

11 44. Defendant has acted on grounds applicable to the entire Class, making final injunctive
12 relief or declaratory relief appropriate for the Class as a whole.

13 45. Class treatment is therefore appropriate under Federal Rule of Civil Procedure 23.

14 46. Class damages will be adduced and proven at trial through expert testimony and other
15 competent evidence, including evidence exclusively in Defendant's possession.

16 **V. CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 **VIOLATIONS OF THE WASHINGTON CONSUMER PROTECTION ACT**

19 **RCW 19.86.010 *ET SEQ.***

20 47. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
21 forth in full herein.

22 48. The Washington Consumer Protection Act ("WCPA") makes unlawful to commit
23 "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or
24

1 commerce.” RCW 19.86.020. The WCPA provides a private right of action for “[a]ny person who is
2 injured in his or her business or property” by violations of the Act. RCW 19.86.090.

3 49. In the course of the Defendant’s business, it knowingly and intentionally failed to
4 disclose and actively concealed material facts and made false and misleading statements regarding its
5 service fee for grocery deliveries from Whole Foods Market.

6 50. Defendant’s actions as set forth above occurred in the conduct of trade or commerce, and
7 constitute unfair or deceptive trade practices under the WCPA. Defendant’s actions impact the public
8 interest because Plaintiff was injured in exactly the same way as thousands of others who paid a service
9 fee for grocery deliveries from Whole Foods Market as a result of Defendant’s generalized course of
10 deception. Defendant’s conduct has the capacity to, and has actually caused injury not only to Plaintiff,
11 but to thousands of others in Washington and around the country.

12 51. Plaintiff and the Class relied upon and were deceived by the Defendant’s unfair and
13 deceptive misrepresentations of material fact in deciding to enter into contracts or continue doing
14 business with Defendant. Buyers such as Plaintiff and members of the Class would have acted
15 differently knowing that the Defendant charges a service fee in connection with grocery deliveries from
16 Whole Foods Market. Plaintiff and members of the Class would have wanted to know, as would any
17 reasonable person, that the Defendant charges a service fee in connection with grocery deliveries from
18 Whole Foods Market and this information would have changed their and any reasonable customer’s
19 decision to purchase Defendant’s grocery delivery service.

20 52. Plaintiff and the Class were injured as a result of the Defendant’s conduct, and suffered
21 ascertainable monetary loss.

22 53. Plaintiff seeks an award of actual damages, treble damages, attorney’s fees and costs as
23 permitted by the WCPA.
24

54. Pursuant to RCW 19.86.095, Plaintiff will serve the Washington Attorney General with a copy of this complaint as Plaintiff seeks injunctive relief.

SECOND CAUSE OF ACTION

VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT

CAL. CIV. CODE §§ 1750 *ET SEQ.*

55. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

56. The CLRA prohibits unfair or deceptive practices in connection the sale of goods or services to a consumer.

57. Moreover, the CLRA is meant to be “[c]onstrued liberally and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.” Civil Code Section 1760, *inter alia*.

58. The online grocery deliveries from Whole Foods Market that Amazon provides are “Services” as defined by the CLRA. The Whole Foods grocery items are also “Goods” as defined by the CLRA.

59. Plaintiff and the Class Members are “Consumers” as defined by the CLRA.

60. Each of the purchases made by the Plaintiff and the Class Members from the Defendant were “Transactions” as defined by the CLRA.

61. Amazon's false and misleading pricing practices and other policies, acts, and practices described herein were designed to, and did, induce Plaintiff's and Class Members' purchases of Whole Foods grocery deliveries for personal, family, or household purposes, and violated and continues to violate at least the following sections of the CLRA:

1 a. § 1770(a)(9): Advertising goods with intent not to sell them as advertised;

2 b. § 1770(a)(14) Representing that a transaction confers or involves rights, remedies, or
3 obligations that it does not have or involve, or that are prohibited by law; and

4 c. § 1770(a)(20): Advertising that a product is being offered at a specific price plus a
5 specific percentage of that price unless (A) the total price is set forth in the advertisement, which may
6 include, but not limited to, shelf tags, displays, and media advertising in a size larger than any other
7 price in that advertisement, and (B) the specific price plus a specific percentage of that price represents
8 a markup from the seller's costs or from the wholesale price of the product.

9 62. Amazon violated Sections 1770(a)(9), (14), and (20) by marketing and falsely
10 representing a lower grocery delivery price than what consumers were actually charged. Moreover,
11 Amazon advertised that Prime members would receive "FREE Delivery" and "FREE 2-Hour Grocery
12 Delivery" when, in fact, grocery deliveries from Whole Foods Market are not free and subject to a \$9.95
13 service fee.

14 63. Amazon never intended to sell its grocery deliveries with free delivery.

15 64. On information and belief, Amazon's violations of the CLRA discussed above were done
16 with the actual knowledge, intent, and awareness that the conduct alleged was wrongful.

17 65. On information and belief, Amazon committed these acts knowing it would harm
18 Plaintiff and Class Members.

19 66. Plaintiff and Class Members were injured by Amazon because Plaintiff and Class
20 Members were baited and defrauded into paying more for grocery deliveries than was represented due
21 to Amazon's false representations and advertisements.

22 67. Plaintiff and Class Members were harmed as a direct and proximate result of Amazon's
23 violations of the CLRA and are thus entitled to a declaration that Defendant violated the CLRA.
24

68. On June 9, 2022, Plaintiff Dena Griffith, on behalf of herself and all class members, sent a written pre-suit demand via certified mail to Defendant in compliance with California Civil Code Section 1782. Attached hereto as Exhibit 2 is a copy of Plaintiff's demand letter. More than thirty days have passed since Plaintiff sent her written demand letter and Defendant has failed to take the corrective action described in Plaintiff's letter. Accordingly, Plaintiff seeks damages, injunctive relief, and attorneys' fees and costs under the CLRA.

THIRD CAUSE OF ACTION

VIOLATIONS OF THE FALSE ADVERTISING LAW

CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.

69. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

70. Under the FAL, “[i]t is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services” to disseminate any statement “which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

71. As alleged herein, Amazon’s advertisements that Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery” are false and misleading.

72. Plaintiff suffered injury in fact as a result of Amazon's actions as set forth herein because plaintiff purchased a grocery delivery from Whole Foods Market in reliance on Amazon's false and misleading marketing claims.

73. Amazon's business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to the FAL because Amazon advertised its grocery delivery service in a manner that is untrue and misleading, which Amazon knew or reasonably should have known.

74. Amazon profited from its sales of the falsely and deceptively advertised grocery delivery service to unwary consumers.

75. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff and Class Members are entitled to injunctive and equitable relief and restitution.

FOURTH CAUSE OF ACTION

VIOLATIONS OF THE UNFAIR COMPETITION LAW

CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.

76. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

77. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200.

78. The acts, omissions, misrepresentations, practices, and non-disclosures of Amazon as alleged herein constitute business acts and practices.

FRAUDULENT

79. A statement or practice is fraudulent under the UCL if it is likely to deceive the public, applying a reasonable consumer test.

80. As set forth herein, Amazon’s claims relating to the online marketing of its grocery delivery services are likely to deceive reasonable consumers and the public.

UNLAWFUL

81. The acts alleged herein are “unlawful” under the UCL in that they violate at least the following laws:

- The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*; and
- The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* SEP

UNFAIR

82. Amazon's conduct with respect to the advertising and sale of its grocery delivery service was unfair because Amazon's conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

83. Amazon's conduct with respect to the advertising and sale of its grocery delivery service was also unfair because it violated public policy as declared by specific statutory or regulatory provisions, including but not limited to the False Advertising Law.

84. Amazon's conduct with respect to the advertising and sale of its grocery delivery service was also unfair because the consumer injury was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided.

85. Amazon profited from the sale of its falsely, deceptively, and unlawfully advertised grocery delivery service to unwary consumers.

86. Plaintiff and Class Members are likely to be damaged by Amazon's deceptive trade practices, as Amazon continues to disseminate, and is otherwise free to continue to disseminate misleading information. Thus, injunctive relief enjoining this deceptive practice is proper.

87. Amazon's conduct caused and continues to cause substantial injury to Plaintiff and the other Class Members, who have suffered injury in fact as a result of Amazon's fraudulent, unlawful, and unfair conduct.

88. In accordance with Bus. & Prof. Code § 17203, Plaintiff, on behalf of herself, Class Members, and the general public, seeks an order enjoining Amazon from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

89. Plaintiff, on behalf of herself and Class Members, also seeks an order for the restitution of all monies from Amazon's grocery delivery service fee that Amazon unjustly acquired through acts of unlawful competition.

FIFTH CAUSE OF ACTION

UNJUST ENRICHMENT/ QUASI CONTRACT

90. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

91. Plaintiff and the Class allege that Defendant owes money to them for the unlawful or deceptive conduct described herein.

92. Plaintiff and Class Members paid for a service fee in connection with a Whole Foods Market grocery delivery.

93. Defendant, by charging consumers a service fee, received additional money from Plaintiff and the Class.

94. The additional money was paid by mistake, where an undue advantage was taken from the Plaintiff's and the Class's lack of knowledge of the deception, whereby money was exacted to which the Defendant had no legal right.

95. Defendant is therefore indebted to Plaintiff and the Class in a sum certain, specifically the service fee actually paid during the Class period as consideration for which Defendant unlawfully charged consumers.

96. Defendant is therefore indebted to Plaintiff and the Class in a sum certain for the additional money had and received by the Defendant, which the Defendant in equity and good conscious should not retain.

97. Defendant is therefore liable to Plaintiff and the Class in the amount of unjust enrichment or money had and received to be determined at trial.

SIXTH CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

98. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

99. Defendant represented that Prime members would receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery” when, in fact, Prime members would not receive free grocery delivery because Defendant charges a mandatory service fee.

100. The misrepresentations concerned material facts about the price of Defendant's grocery delivery service that influenced Plaintiff and the Class Members to purchase the delivery service.

101. At the time Defendant made the misrepresentations, Defendant knew or should have known that the misrepresentations were false or Defendant made the misrepresentations without knowledge of their truth or veracity.

102. Plaintiff and the class members reasonably, justifiably, and detrimentally relied on the misrepresentations and, as a proximate result thereof, have and will continue to suffer damages in the form of lost money from the payment of the service fee.

SEVENTH CAUSE OF ACTION

CONCEALMENT/ NON-DISCLOSURE

103. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set

1 forth in full herein.

2 104. Defendant knew at the time of sale that it had falsely represented the actual price of the
3 grocery delivery service that consumers would pay upon checkout.

4 105. Defendant fraudulently concealed from and/or intentionally failed to disclose to Plaintiff
5 and the Class Members that Defendant would charge a service fee for its grocery delivery service beyond
6 the advertised price.

7 106. Defendant had exclusive knowledge of Misrepresentations' falsity at the time of sale.
8 The defect (the actual price of the delivery service upon checkout) is latent and not something that
9 Plaintiff or the Class Members, in the exercise of reasonable diligence, could have discovered
10 independently prior to purchase. The defect would not be disclosed by careful, reasonable inspection
11 by the purchaser.

12 107. Defendant had the capacity to, and did, deceive Plaintiff and the Class Members into
13 believing that they would pay the advertised price for the grocery delivery service upon checkout, when
14 in reality, Plaintiff and the Class Members were charged more than the advertised price for the grocery
15 delivery service upon checkout.

16 108. Defendant undertook active and ongoing steps to conceal the actual price of the grocery
17 delivery service.

18 109. The facts concealed and/or not disclosed by Defendant to Plaintiff and the Class
19 Members are material facts in that a reasonable person would have considered them important in
20 deciding whether to purchase the grocery delivery service.

21 110. Defendant had a duty to disclose accurate information regarding the actual price that
22 consumers would pay for its grocery delivery service upon checkout.

23 111. Defendant intentionally concealed and/or failed to disclose the actual price of the grocery
24

1 delivery service that consumers would pay upon checkout for the purpose of inducing Plaintiff and the
2 Class Members to act thereon.

3 112. Plaintiff and the Class Members justifiably acted or relied upon the concealed and/or
4 non-disclosed facts to their detriment, as evidenced by their purchase of the grocery delivery service.

5 113. Plaintiff and Class Members suffered a loss of money as a result of Defendant's false
6 information because they would not have purchased the grocery delivery service, or would not have
7 paid as much for the grocery delivery service, if the truth concerning Defendant's Misrepresentations
8 had been known.

9 **EIGHTH CAUSE OF ACTION**

10 **FRAUD**

11 114. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
12 forth in full herein.

13 115. Defendant willfully, falsely, and knowingly misrepresented that Prime members would
14 receive "FREE Delivery" and "FREE 2-Hour Grocery Delivery." The Misrepresentations were
15 communicated to Plaintiff and the Class Members through Amazon's website.

16 116. At all relevant times, Defendant knew that it had misrepresented the advertised price for
17 its grocery delivery service because Defendant knew it was charging an additional service fee upon
18 checkout without disclosing this fee to Plaintiff and the Class Members.

19 117. Defendant's misrepresentations were made with the intent that the general public,
20 including Plaintiff and the Class Members, would rely upon it. Defendant's Misrepresentations were
21 made with knowledge of the falsity of such statements, or in reckless disregard of the truth thereof.

22 118. Plaintiff and the class members' reliance upon Defendant's misrepresentations was
23 reasonable. The hidden service fee charged by Defendant is latent and not something that Plaintiff or
24

1 the class members, in the exercise of reasonable diligence, could have discovered independently prior
2 to purchase.

3 119. In actual and reasonable reliance upon the Misrepresentations, Plaintiff and the Class
4 Members purchased Defendant's grocery delivery service. Plaintiff and the Class members suffered a
5 loss of money as a result of Defendant's intentional misrepresentations because they would not have
6 purchased the grocery delivery service, or would have paid less for the grocery delivery service, if the
7 truth concerning Defendant's Misrepresentations had been known.

8 **NINTH CAUSE OF ACTION**

9 **BREACH OF CONTRACT**

10 120. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
11 forth in full herein.

12 121. Plaintiff and Class Members entered into a contract with Amazon for a Prime
13 membership that included free Whole Foods Market delivery with a minimum \$35 purchase for a yearly
14 fee of \$119. Amazon's representations that it offers "FREE Delivery" and "FREE 2-hour grocery
15 delivery" from Whole Foods Market are terms that were integrated into the Amazon prime membership
16 contract.

17 122. Defendant breached the contract when Amazon rescinded free Whole Foods Market
18 delivery with a minimum \$35 purchase. Defendant also breached the contract by failing to deliver the
19 Whole Foods Market grocery deliveries within the promised 2-hour time period.

20 123. The imposition of the \$9.95 service fee constituted a modification of the contract with
21 Amazon without consideration to Plaintiff and the Class Members.

22 124. Plaintiff and the Class Members were damaged as a result of Amazon's breach and/or
23 unilateral modification of the contract.
24

1 125. Plaintiff and the Class are entitled to damages caused by Defendant's breach of contract,
2 as well as declaratory relief holding that the imposition of the \$9.95 service constituted a modification
3 of the contract without consideration to Plaintiff and is therefore void.

4 **TENTH CAUSE OF ACTION**

5 **BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

6 126. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
7 forth in full herein.

8 127. Defendant had a duty to perform its contractual obligations in good faith.

9 128. By failing to perform under the contract by continuing to provide Plaintiff with free
10 Whole Foods Market delivery with a minimum \$35 purchase during the duration of Plaintiff's annual
11 contract, Defendant breached the implied covenant of good faith and fair dealing.

12 129. Plaintiff was damaged as a result of Defendant's breaches of the implied duty of good
13 faith and fair dealing.

14 130. Plaintiff is entitled to damages caused by Defendant's breach of the implied duty of good
15 faith and fair dealing.

16 **ELEVENTH CAUSE OF ACTION**

17 **DECLARATORY RELIEF**

18 131. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
19 forth in full herein.

20 132. An actual controversy now exists between the Parties regarding their rights and
21 liabilities, and terms under Amazon Prime's contract for deliveries, including (a) whether the deliveries
22 are "free;" (b.) whether they will be delivered in accordance with the represented time limits; (c.)
23 whether and under what circumstances the Prime contractual terms may be changed or amended; (d.)
24

1 whether a unilateral change can be, or has been effectuated; (e.) whether any modification of the
2 contractual terms were effectuated in accordance with Washington law; (f.) whether the contract or its
3 amended terms are void or voidable; (g) whether any change in terms, or the terms themselves, are
4 unconscionable, and; (h.) whether any purported modification of terms is lawful or enforceable.

5 133. A judicial declaration is necessary and appropriate at this time as Defendant is currently
6 enforcing its contract and refusing to return sums paid by Plaintiff and the Class Members for the service
7 fee charged in connection with Whole Foods grocery deliveries.

8 134. Plaintiff and the class members are therefore entitled to a judicial declaration pursuant to
9 28 U.S.C. § 2201.

10 VI. PRAYER FOR RELIEF

11 Wherefore, Plaintiff, on behalf of herself, all others similarly situated, and the general public,
12 prays for judgment against Defendant as to each and every cause of action, and the following remedies:

13 (a) An Order declaring this action to be a proper class action, appointing Plaintiff as class
14 representative, and appointing her undersigned counsel as class counsel;

15 (b) An Order requiring Amazon to bear the cost of class notice;

16 (c) An Order enjoining Amazon from engaging in the unfair, unlawful, and deceptive
17 business practices and false advertising complained of herein;

18 (d) An Order compelling Amazon to conduct a corrective advertising campaign;

19 (e) An Order compelling Amazon to recall and destroy all misleading and deceptive
20 advertising materials;

21 (f) An Order requiring Amazon to disgorge all monies, revenues, and profits obtained by
22 means of any wrongful act or practice;

23 (g) An Order requiring Amazon to pay restitution to restore all funds acquired by means of
24

any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice,
untrue or misleading advertising, plus pre-and post-judgment interest thereon;

(h) An Order requiring Amazon to pay all actual damages, treble damages, and statutory
damages permitted under the causes of action alleged herein;

(i) An Order providing that the imposition of the \$9.95 service fee on Whole Foods Market
deliveries by Amazon to Amazon Prime members is void.

(j) An award of attorneys' fees and costs; and

(k) Any other and further relief that Court deems necessary, just, or proper.

VII. JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED this 25th day of October 2022.

BORDE LAW PLLC

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By: s/ Ronald A. Marron

Ronald A. Marron (admitted *pro hac vice*)

Michael T. Houchin (admitted *pro hac vice*)

Lilach Halperin (admitted *pro hac vice*)

651 Arroyo Drive

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mike@consumersadvocates.com

lilach@consumersadvocates.com

**INTERIM CLASS COUNSEL FOR
PLAINTIFF AND THE PROPOSED
CLASSES**

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on October 25, 2022, I electronically filed the foregoing with the Clerk of
3 the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF
4 participants.

5
6
7
8 **BORDE LAW PLLC**

9 By: s/ Manish Borde
10 Manish Borde, WSBA #39503
11 600 Stewart St., 400
12 Seattle, WA 98101
13 Telephone: (206) 531-2722
14 Email: mborde@bordelaw.com
15 *Attorney for Plaintiff Dena Griffith*

EXHIBIT 1

Help & Customer Service

◀ All Help Topics

Amazon Prime

Amazon Prime Benefits

Amazon Prime

Amazon Prime Membership for the Netherlands at Amazon.nl and Amazon.de

About Prime Day

About Prime Early Access Sale

Sign Up for the Amazon Prime Free Trial

Share Your Amazon Prime Benefits

Pause Your Amazon Prime Membership

End Your Amazon Prime Membership

The Amazon Prime Membership Fee

Change Your Prime or Prime Video Monthly Membership

Switch Amazon Prime Membership

Use Buy Now with Amazon Prime

Using a Promotional Code for Amazon Prime

Exchange a Prime Gift Membership

Buy a Prime Gift Membership

Buy Add-on Items

Scan the Amazon Elements Code

Subscribe to Amazon Prime via an Approved Partner (Free, SFR)

Amazon Prime Terms & Conditions

Amazon Prime Referral Program Terms and Conditions

Electronic Benefits Transfer (EBT) Cards

Amazon Incentives Purchase Terms for Amazon Prime Membership Codes

Amazon Fresh and Whole Foods Market Packaging

Quick solutions

Find more solutions

Shipping and Delivery › Amazon Prime ›

Amazon Prime Terms & Conditions

Last updated May 11, 2021

Welcome to the terms and conditions ("**Terms**") for Amazon Prime. These Terms are between you and Amazon.com Services LLC and/or its affiliates ("**Amazon.com**" or "**Us**") and govern our respective rights and obligations. Please note that your use of the Amazon.com website and Prime membership are also governed by the agreements listed and linked to below, as well as all other applicable terms, conditions, limitations, and requirements on the Amazon.com website, all of which (as changed over time) are incorporated into these Terms. If you sign up for a Prime membership, you accept these terms, conditions, limitations and requirements.

- [Conditions of Use](#)
- [Amazon.com Privacy Notice](#)
- [Amazon Video Terms of Use](#)
- [Amazon Music Terms of Use](#)
- [Amazon Photos Terms of Use](#)
- [Kindle Store Terms of Use](#)

Membership Cancellation

If you signed-up for your Prime membership directly through us, you may cancel your Prime membership any time by visiting Your Account and adjusting your membership settings. If you cancel within 3 business days of signing up for or converting from a free trial to a paid membership, we will refund your full membership fee; provided that we may charge you (or withhold from your refund) the value of Prime benefits used by you and your account during this 3-business day period. If you cancel at any other time, we will refund your full membership fee only if you and your account did not make any eligible purchases or take advantage of Prime benefits since your latest Prime membership charge. If you signed up for your Prime membership through a third party, you may need to contact the third party to cancel your membership or receive any refund under its applicable policies. Prime memberships redeemed through a Prime gift code or promotional code are not refundable.

Shipping Benefits and Eligible Purchases

[Prime shipping benefits](#) depend upon inventory availability, order deadlines, and in some cases the shipping address. They are limited to certain products sold by Amazon.com (or third-party sellers participating in Prime) on the Amazon.com website and to certain products on third-party websites that offer Prime shipping benefits. Products eligible for Prime will be designated as such on their product pages. Some special product, order, handling fees, and/or taxes may still apply to eligible purchases. If only some items in your order are eligible for Prime, you will pay applicable shipping charges for the ineligible items. Changing or combining orders, or changing your shipping address, speed, or preferences might affect Prime eligibility. Certain purchases may only be entitled to Standard Shipping because of their size, weight, and other shipping characteristics.

We may exclude products with special shipping characteristics at our discretion. The [Prime section](#) of our Help pages provides information about eligible items, shipping cost, shipping speed, and shipping destinations.

Other Benefits and Supplemental Memberships



Your Orders
Track or cancel orders



Returns & Refunds
Exchange or return items



Manage Prime
Cancel or view benefits



Payment Settings
Add or edit payment methods



Carrier Info
Shipping carrier information



Account Settings
Change email or password

Click [here](#) for information about additional Prime benefits. We also offer Prime members supplemental memberships, which are subject to these Terms, require you to be a Prime member, and may have additional fees and terms. As used in these Terms, "Prime" applies to all supplemental memberships. Click [here](#) for more information about supplemental memberships.

Other Limitations

- We reserve the right to accept or refuse membership in our discretion.
- We may send you email and other communications related to Prime and your Prime membership (regardless of any settings or preferences related to your Amazon account).
- You may not transfer or assign your Prime membership or any Prime benefits, including promotion codes for Prime memberships or benefits, except as allowed in these terms.
- Prime members are not permitted to purchase products for the purpose of resale, rental, or to ship to their customers or potential customers using Prime benefits.
- Some Prime benefits may require certain purchase thresholds, have quantity or shipping address limitations, or require members to meet specified criteria in order to access them.
- From time to time, Amazon may choose in its sole discretion to add or remove Prime membership benefits.

Fees and Renewal

The membership fee for Prime is stated in the [Prime section](#) of our Help pages. From time to time, we may offer different membership terms, and the fees for such membership may vary. The Prime membership fee is non-refundable except as expressly set forth in these Terms. Taxes may apply on either or both of the membership fee and the reduced shipping charges for Prime.

If you sign up for your Prime membership through us and are billed by us, then the billing terms described below will apply to your membership.

If all eligible payment methods we have on file for you are declined for payment of your membership fee, you must provide us a new eligible payment method promptly or your membership will be canceled. If you provide us with a new eligible payment method and are successfully charged, your new membership period will be based on the original renewal date and not the date of the successful charge.

UNLESS YOU NOTIFY US BEFORE A CHARGE THAT YOU WANT TO CANCEL OR DO NOT WANT TO AUTO RENEW, YOU UNDERSTAND YOUR PRIME MEMBERSHIP WILL AUTOMATICALLY CONTINUE AND YOU AUTHORIZE US (WITHOUT NOTICE TO YOU, UNLESS REQUIRED BY APPLICABLE LAW) TO COLLECT THE THEN-APPLICABLE MEMBERSHIP FEE AND ANY TAXES, USING ANY ELIGIBLE PAYMENT METHOD WE HAVE ON RECORD FOR YOU.

If you signed up for your Prime membership through a third party and are not billed directly by us, then the billing terms provided by the third party will apply to your membership.

Promotional Trial and Qualification-Based Memberships

We sometimes offer certain customers various trial or other promotional memberships, which are subject to these Terms except as otherwise stated in the promotional offers. Trial members may at any time (through Your Account) choose not to continue to paid membership at the end of the trial period.

If you sign up for a qualification-based Prime membership (including but not limited to Prime Student and Prime for [qualifying EBT and government assistance recipients](#)), you will receive certain Prime benefits for the reduced rate specified in the [Prime section](#) of our Help page. To sign up for and use a qualification-based Prime membership, you must meet the eligibility conditions described on the applicable enrollment page and provide any required documentation.

Agreement Changes

We may in our discretion change these Terms, Amazon.com's Conditions of Use and Privacy Notice, or any aspect of Prime membership, without notice to you. If any change to these terms is found invalid, void, or for any reason unenforceable, that change is severable and does not affect the validity and enforceability of any remaining changes or conditions. YOUR CONTINUED MEMBERSHIP AFTER WE CHANGE THESE TERMS CONSTITUTES YOUR ACCEPTANCE OF THE CHANGES. IF YOU DO NOT AGREE TO ANY CHANGES, YOU MUST CANCEL YOUR MEMBERSHIP.

Termination by Us

We may terminate your Prime membership at our discretion without notice. If we do so, we will give you a prorated refund based on the number of full months remaining in your membership. However, we will not give any refund for termination related to conduct that we determine, in our discretion, violates these Terms or any applicable law, involves fraud or misuse of the Prime membership, or is harmful to our interests or another user. Our failure to insist upon or enforce your strict compliance with these Terms will not constitute a waiver of any of our rights.

Limitation of Liability

IN ADDITION TO OTHER LIMITATIONS AND EXCLUSIONS IN AMAZON.COM'S [CONDITIONS OF USE](#), OUR TOTAL LIABILITY, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL NOT EXCEED THE LAST MEMBERSHIP FEE YOU PAID. THIS LIMITATION OF LIABILITY WILL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW AND WILL SURVIVE CANCELLATION OR TERMINATION OF YOUR PRIME MEMBERSHIP.

Disputes

Any dispute or claim relating in any way to these Terms or your use of Prime will be adjudicated in the state or Federal courts in King County, Washington, and you consent to exclusive jurisdiction and venue in these courts. We each waive any right to a jury trial.

Was this information helpful?

Yes

No

Back to top

Get to Know Us

- Careers
- Amazon Newsletter
- About Amazon
- Sustainability
- Press Center
- Investor Relations
- Amazon Devices
- Amazon Science

Make Money with Us

- Sell products on Amazon
- Sell apps on Amazon
- Supply to Amazon
- Become an Affiliate
- Become a Delivery Driver
- Start a package delivery business
- Advertise Your Products
- Self-Publish with Us
- Host an Amazon Hub
- › See More Ways to Make Money

Amazon Payment Products

- Amazon Rewards Visa Signature Cards
- Amazon Store Card
- Amazon Secured Card
- Amazon Business Card
- Shop with Points
- Credit Card Marketplace
- Reload Your Balance
- Amazon Currency Converter

Let Us Help You

- Amazon and COVID-19
- Your Account
- Your Orders
- Shipping Rates & Policies
- Amazon Prime
- Returns & Replacements
- Manage Your Content and Devices
- Your Recalls and Product Safety Alerts
- Amazon Assistant
- Help

English

United States

Amazon Music
Stream millions of songs

Amazon
Advertising

Amazon Drive
Cloud storage from Amazon

6pm
Score deals on fashion brands

AbeBooks
Books, art & collectibles

ACX
Audiobook Publishing Made Easy

Sell on Amazon
Start a Selling Account

Find, attract, and engage customers						
Amazon Business Everything For Your Business	Amazon Fresh Groceries & More Right To Your Door	AmazonGlobal Ship Orders Internationally	Home Services Experienced Pros Happiness Guarantee	Amazon Ignite Sell your original Digital Educational Resources	Amazon Web Services Scalable Cloud Computing Services	Audible Listen to Books & Original Audio Performances
Book Depository Books With Free Delivery Worldwide	Box Office Mojo Find Movie Box Office Data	ComiXology Thousands of Digital Comics	DPReview Digital Photography	Fabric Sewing, Quilting & Knitting	Goodreads Book reviews & recommendations	IMDb Movies, TV & Celebrities
IMDbPro Get Info Entertainment Professionals Need	Kindle Direct Publishing Indie Digital & Print Publishing Made Easy	Amazon Photos Unlimited Photo Storage Free With Prime	Prime Video Direct Video Distribution Made Easy	Shopbop Designer Fashion Brands	Amazon Warehouse Great Deals on Quality Used Products	Whole Foods Market America's Healthiest Grocery Store
Woot! Deals and Shenanigans	Zappos Shoes & Clothing	Ring Smart Home Security Systems	eero WiFi Stream 4K Video in Every Room	Blink Smart Security for Every Home	Neighbors App Real-Time Crime & Safety Alerts	Amazon Subscription Boxes Top subscription boxes – right to your door
PillPack Pharmacy Simplified		Amazon Renewed Like-new products you can trust				

EXHIBIT 2

LAW OFFICES OF
RONALD A. MARRON

A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, California 92103

Tel: 619.696.9006
Fax: 619.564.6665

June 9, 2022

Via: Certified Mail, (receipt acknowledgment with signature requested)

Amazon.com, Inc.
ATTN: Legal Department
410 Terry Avenue North
Seattle, Washington 98109-5210

**RE: NOTICE: Violations of California Consumers Legal Remedies Act, Cal. Civ. Code § 1750
et seq. (“CLRA”), and Duty to Preserve Evidence**

To Whom It May Concern:

PLEASE TAKE NOTICE that this law firm represents Dena Griffith on behalf of herself and all others similarly situated. All further communications intended for our client must be directed through this office. This notice and demand letter provides **Amazon.com, Inc.** (“YOU” or “Amazon”) with notice and demand for corrective action arising from YOUR violations of the California Consumer Legal Remedies Act, CAL. CIV. CODE §§ 1750 *et seq.* (“CLRA”). As relevant here, the CLRA prohibits unfair and unlawful methods of competition and unfair business practices.

As shown below, YOU advertise that Amazon Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery” even though YOU charge consumers a \$9.95 “service fee” in connection with grocery deliveries from Whole Foods Market. Additionally, YOU engage in a bait and switch advertising scheme by not disclosing the \$9.95 service fee with the advertised price of the Whole Foods Market grocery items. This amounts to a clear, ongoing, and unequivocal violation of the CLRA. Accordingly, you are liable to my client and to the putative class for substantial monetary damages. This letter serves as notice and demand for corrective action by YOU pursuant to California Civil Code § 1782.

We hereby demand that you take immediate corrective action within thirty (30) days as further described below.

One of the advertised benefits of Amazon Prime is that members will receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery,” including grocery deliveries from Whole Foods Market. YOU make these representations on the Amazon website and in television and print advertisements. Below are representative examples of advertisements from YOUR website:

FREE 2-Hour Grocery Delivery
Free ultrafast delivery on groceries and household essentials



Shop a wide selection of groceries including fresh foods and produce with free two-hour delivery from Fresh and your local Whole Foods Market. Available in select US cities

- **Go to amazon.com/grocery to learn more**
- **Meet minimum order amount***
- **Checkout using your existing Amazon account**

** Threshold amount may vary*

Check out what's included:



Fast, free delivery

Enjoy fast, free delivery, just for being a Prime member - including 2-hour delivery on thousands of items!



Popular movies and shows

New releases. Award-winning Amazon Originals. Watch what you love on your favorite devices.



Join Prime

FREE One-Day Delivery

Get items the next day



Available on more than ten million products, with no minimum purchase. Receive orders by 9 p.m. the next day. Filter by "Get it tomorrow" when shopping. Selection and order cutoff varies by area.

- Look for the One-Day logo
- Add eligible items to your cart.
- Select delivery option at checkout.

LEARN MORE

Despite YOUR advertisements and representations that Amazon Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery,” YOU began charging YOUR customers a \$9.95 service fee in connection with grocery deliveries from Whole Foods Market. YOUR \$9.95 “service fee” is in essence a hidden delivery fee. In fact, the service fee was put in place to help cover delivery operating costs like equipment and technology without raising product prices. Amazon customers are only charged the \$9.95 “service fee” for Whole Foods grocery deliveries. If a customer instead chooses to pick up the items in-store, then that customer will not be charged the service fee.

In addition to YOUR false representations that Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery,” YOU engage in a bait-and-switch advertising scheme by not disclosing the \$9.95 service fee along with the advertised price of the Whole Foods grocery items. The first page of the Whole Foods delivery section on Amazon’s website displays various grocery items alongside the advertised price of the items. Nowhere on this initial webpage is the \$9.95 service fee disclosed.

If a consumer then clicks on the desired grocery item, the next webpage states in opaque text “\$9.95 for 2-hour delivery.” This text is in small font and is unlikely to be noticed by a reasonable consumer. Moreover, the text is in smaller font and in a different color than the advertised price of the grocery item.

Once the consumer clicks on the “add to cart” icon, there is a series of webpages asking for payment and delivery information before the consumer arrives at the final “place your order” page. On the “place your order” page, the service fee is shown in small text above the total price of the delivery that is unlikely to be noticed by a reasonable consumer. Moreover, Amazon also includes a \$5 tip that is shown in small text above the total price of the delivery that is unlikely to be noticed by a reasonable consumer. Although the tip is “optional,” reasonable consumers would not notice that the \$5 tip has been added by default.

YOUR practice of initially advertising only part of a price and then later revealing the service fee as the consumer completes the buying process has been labeled “drip pricing” by the Federal Trade Commission (“FTC”). YOU use drip pricing to bamboozle consumers using the tried and true classic, and unlawful, bait advertising scheme. Again, YOU advertise groceries from Whole Foods at a certain price and then tack on a mandatory “service fee” later in the ordering process after the consumer is already invested in the ordering process.

Our client, Dena Griffith is an Amazon Prime member who read and relied on Amazon’s online advertisements that Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery.” On January 22, 2022, Ms. Griffith made an online order for a Whole Foods grocery delivery from the Amazon website and was charged a \$9.95 service fee. Ms. Griffith was deceived by and relied upon YOUR misleading bargain and bait advertising, and specifically the hidden and deceptive nature of the service fee and the fact that YOU advertise that Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery.”

In conclusion, YOUR material misrepresentations are deceiving customers into purchasing YOUR Amazon Prime service under the representation that hat Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery,” when in fact Prime members are charged a \$9.95 service fee in connection with grocery deliveries from Whole Foods Market.

Please be advised that the alleged unfair methods of competition or unfair or deceptive acts or practices in violation of the CLRA include, but are not necessarily limited to:

§ 1770(a)(9): Advertising goods with intent not to sell them as advertised;

§ 1770(a)(14) Representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law; and

§ 1770(a)(20): Advertising that a product is being offered at a specific price plus a specific percentage of that price unless (A) the total price is set forth in the advertisement, which may include, but not limited to, shelf tags, displays, and media advertising in a size larger than any other price in that advertisement, and (B) the specific price plus a specific percentage of that price represents a markup from the seller’s costs or from the wholesale price of the product.

YOU have failed to honor your consumer protection obligations. Based upon the above, demand is hereby made that YOU conduct a corrective advertising campaign and destroy all misleading and deceptive advertising materials.

YOUR failure to comply with this request within a reasonable time— or thirty (30) days for violations of the CLRA— may subject you to the following remedies, available for violations of the CLRA as well as other consumer warranty and consumer protection statutes, which will be requested in a class action complaint on behalf of our client and all other similarly situated consumers:

- (1) The actual damages suffered;
- (2) An order enjoining YOU for such methods, acts or practices;
- (3) Restitution of property;
- (4) Disgorgement of profits;
- (4) Punitive damages;
- (5) Court costs and attorneys’ fees;
- (6) Costs of class action notice and administration; and
- (7) Any other relief which the court deems proper.

Additionally, I remind you of your legal duty to preserve all records relevant to such litigation. *See, e.g., Convolv, Inc. v. Compaq Computer Corp.*, 223 F.R.D 162, 175 (S.D.N.Y 2004); *Computer Ass'n Int'l v. American Fundware, Inc.*, 133 F.R.D. 166, 168-69 (D. Colo. 1990). This firm anticipates that all e-mails, letters, reports, internal corporate instant messages, and advertising campaigns records that are related to the marketing of YOUR services will be sought in the forthcoming discovery process. You therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling your account) to preserve all such relevant information.

I look forward to YOU taking corrective action. Thank you for your time and consideration in this matter.

Sincerely,

THE LAW OFFICES OF RONALD A. MARRON

/s/ Ronald A. Marron

RONALD A. MARRON

Attorney for Dena Griffith

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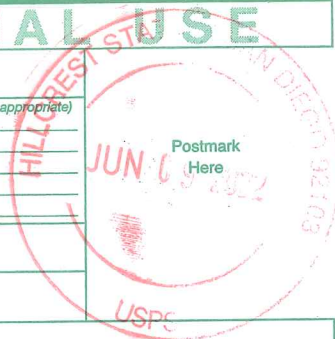
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